

Internal Revenue Service

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In Re:

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-131276-07

Date:

September 15, 2008

Legend

Grantor =

Spouse =

Corporation =

Corporate Trustee =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

Attorney =

Accountant =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =

Trust 10 =

Trust 11 =

Trust 12 =

Trust 13 =

Trust 14=

Trust 15=

Trust 16=

Date 1 =

Date 2 =

\$X =

Dear :

This is in response to a letter from your authorized representative dated July 8, 2008 and prior correspondence, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) tax exemption.

Facts

The facts and representations submitted are summarized as follows: Grantor and Spouse created Trusts 1-16, in Years 1 through 9 for the benefit of their Grandchildren and charities. Trusts 1-16 are intended to qualify as charitable remainder unitrusts described in either section 664(d)(2) or section 664(d)(3) of the Internal Revenue Code. The unitrust beneficiary of each trust is a different grandchild of Grantor and Spouse. Each Trust was funded with stock in Corporation, a publicly traded company, that was transferred to each Trust by Grantor.

The provisions of each trust are substantially similar. In the case of the trusts qualifying under section 664(d)(2), Section 2 of each trust provides that the Trustee shall pay to the designated grandchild beneficiary during the beneficiary's life, but not to exceed a period of 20 years, an amount equal to 5% of the net fair market value of the assets valued the first business day of the taxable year. In the case of the trusts qualifying under section 664(d)(3), Section 2 of each trust provides that the Trustee shall pay to the designated grandchild beneficiary during the beneficiary's life, but not to exceed a period of 20 years, the lesser of the trust income for the taxable year and 5% of the net fair market value of the assets valued the first business day of the taxable year.

Section 4 of each trust provides that at the end of 20 years or the prior death of the beneficiary, Trustee shall distribute all of the then principal and income of Trusts to any one or more charitable organizations described in §§ 170(b)(1)(A), 170 (c), 2055(a) and 2055(c), that the individual serving as trustee designated in writing, or if the

individual trustee did not so designate, then to such charities as the corporate trustee designates.

Attorney prepared the Forms 709, United States Gift (and Generation-Skipping Transfer) Tax returns reporting the transfers to Trusts 1 through 14, made in Years 1-7. Accountant prepared the Forms 709 reporting the transfers to Trusts 15 and 16 made in Years 8 and 9. On each of these returns, Grantor and Spouse elected to treat the gifts as made one-half by each spouse under section 2513. With respect to each return noted above, no GST exemption was allocated to any of the transfers to Trusts 1-16, and with respect to the years in which section 2632(c) was in effect, under section 2632(c)(3)(B)(v), the deemed allocation rules did not apply with respect to the trusts.

In Year 10, Corporate Trustee determined that Grantor had failed to allocate any of her GST to the transfers to Trusts 1-16. Grantor consulted with Accountant and it was determined that Grantor would not request an extension of time to make allocations of GST exemption under § 2642(g). On Date 1, an amended Form 709 was filed that made late allocations of Grantor's available GST exemption to Trusts 1 – 16. The allocations were effective as of Date 1, and the Grantor elected pursuant to section 26.242-2(a)(2), to use the fair market value of the trust assets on Date 2 for purposes of determining the inclusion ratio. Grantor allocated a total of \$X on this return.

Distributions have been made from Trust 1-16 to the respective unitrust beneficiary. These distributions constitute taxable distributions as defined in section 2612(b) subject to GST tax. It is represented that Forms 709-GS(D) were filed and GST tax paid with respect to some of these distributions, and Forms 709-GS(D) are being prepared with respect to the balance of the distributions.

Grantor had sufficient GST exemption available to allocate to Trusts in Years 1 through 10.

You have requested the following rulings:

1. That an extension of time is granted under § 2642(g)(1) and sections §§301.9100-1 and 301.9100-3 to allocate the Grantor's remaining GST exemption to Trusts 1 -16 with respect to the transfers to these trusts in Years 1-10, and that the inclusion ratio with respect to these trusts will be based upon the federal gift tax value of the property transferred and the allocation will be effective as of the date of transfer.

2. That if the relief in ruling request 1 is granted, and GST exemption allocations are made with respect to Trusts 1 through 16, the late allocations of Grantor's GST exemption made on Grantor's amended Form 709 filed on Date 1 are void or ineffective and GST exemption in the amount of \$X is restored to Grantor.

3. That if relief is granted to Grantor and similar relief is granted to Grantor's Spouse, Trusts will have a zero inclusion ratio such that no GST tax will be due with respect to any of the distributions from Trusts.

Law and Analysis

Section 2601 of the Internal Revenue Service imposes a tax on every generation-skipping transfer made by a transferor to a skip person. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip).

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that, in general, an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. Section 26.2632-1(b)(4)(ii)(A)(1) provides generally, that an allocation of GST exemption is effective as of the date of any transfer as to which the Form 709 on which it is made is a timely filed return (a timely return). An allocation made on a Form 709 filed after the due date for reporting a transfer to the trust (a late allocation) is effective on the date the Form 709 is filed and is deemed to precede in point of time any taxable event occurring on that date. Section 26.2632-1(b)(4)(ii)(A)(2) provides that a late allocation to a trust is irrevocable when made.

Section 2642(b)(1) provides that, except as provided in section 2642(f), if the allocation of the GST exemption to any transfer of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio under section 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)).

Section 26.2642-2(a)(2) provides that if a transferor makes a late allocation of GST exemption to a trust, the value of the property transferred to the trust is the fair market value of the trust assets determined on the effective date of the allocation of GST exemption. If a transferor makes a late allocation of GST exemption to a trust, the transferor may, for the sole purpose of determining the fair market value of the trust assets, elect to treat the allocation as having been made on the first day of the month during which the allocation is made. An allocation is not effective until it is actually filed with the Internal Revenue Service.

Under section 2652(a)(2), if, under section 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the individual's spouse, then the gift shall be so treated for GST tax purposes.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under section 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of the section.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under section 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the

taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

In the present case, after consulting with a tax advisor regarding the appropriate course of action, Grantor made late allocations with respect to Trusts 1-16. Under section 2631(b) and section 26.2632-1(b)(4)(ii)(A)(2), these allocations were irrevocable. Based on the facts submitted and the representations made, we conclude that Grantor made a late allocation of GST exemption to Trusts 1-16 and that relief under section 301.9100 is not available.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: